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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,210

10/16/2003

Edward A. Hubbard

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EXAMINER

NASH, LASHANYA RENEE

ART UNIT

PAPER NUMBER

2492

NOTIFICATION DATE

DELIVERY MODE

05/19/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/687,210	Applicant(s) HUBBARD ET AL.	
	Examiner LASHANYA NASH	Art Unit 2492	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 29-54.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/saleh najjar/
Supervisory Patent Examiner, Art Unit 2492

/LaShanya R Nash/
Examiner, Art Unit 2492

Continuation of 5. Applicant's reply has overcome the following rejection(s): Rejection of claims 43-48 under 35 USC 101 and rejection of claim 54 under 112, second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 26 April 2011 have been fully considered but they are not persuasive.

Applicant contends that Smith and Biorge fail to disclose the limitation "to provide environmental data and/or location data received from at least one sensor coupled to the one or more remote distributed devices" and "wherein the incentive is based at least in part on system capabilities of the one or more remote distributed devices comprising a type of sensor". Examiner respectfully disagrees. Examiner asserts that Smith expressly discloses providing environmental data (column 7, lines 9-13) received from at least one sensor coupled to the one or more remote distributed devices (column 6, line 60-column 7, line 4). Furthermore, Examiner asserts that Biorge expressly discloses a system for providing incentives to the user (column 6, lines 32-36). Specifically, Biorge teaches a system where the incentive is based in part on system capabilities of the one or more remote distributed devices comprising a type of sensor. The system capabilities and type of sensors are construed as the incentive code and customer device identification, as taught by Biorge, as the device identification is employed to associate the particular device with the incentive provided related to that device (column 8, lines 15-30). Therefore it is evident that the type of the device, including capabilities and functions of the device are considered in providing the type of incentive. Additionally, Examiner notes that the claim language "wherein the incentive is based at least in part on system capabilities if the one or more remote distributed devices" is broad. The claims fail to explicitly recite any particular information that is retrieved or any particular steps which perform an association that constitutes the incentive being "based" on the system capabilities. Examiner suggests amending the claims to recite limitations which clearly describe the functions necessary for an incentive to be provided "based on" the system capabilities of the one or more remote distributed devices.

Applicant contends that Biorge discloses the customer has an incentive to enter into a future transaction in contrast to the device being provided an incentive to send information. Examiner respectfully disagrees. Examiner asserts that Biorge discloses that the incentive plan associated with the device is ascertained and the user is incentivized to provide information to the system (i.e. customer chooses to participate in the plan and further identification data; column 6, lines 1-48). Therefore, it is evident that the incentive system of Biorge discloses providing an incentive to send information, as claimed by Applicant. Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).